

License proceeding means a proceeding before FERC for issuance of a license for a hydroelectric facility under 18 CFR parts 4 or 5.

Material fact means a fact that, if proved, may affect a Department's decision whether to affirm, modify, or withdraw any condition or prescription.

NEPA document means an environmental assessment or environmental impact statement issued to comply with the requirements of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*

NMFS means the National Marine Fisheries Service, a constituent agency of the Department of Commerce, acting by and through the Assistant Administrator for Fisheries or one of NMFS's six Regional Administrators, as appropriate.

Office of Habitat Conservation means the NMFS Office of Habitat Conservation. Address: Chief, Habitat Protection Division, Office of Habitat Conservation, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910. Telephone 301-713-4300. Facsimile number 301-713-4305.

Party means, with respect to NMFS's hearing process under subpart B of this part:

(1) A license party that has filed a timely request for a hearing under:

(i) Section 221.21; or

(ii) Either 7 CFR 1.621 or 43 CFR 45.21, with respect to a hearing process consolidated under § 221.23;

(2) A license party that has filed a timely notice of intervention and response under:

(i) Section 221.22; or

(ii) Either 7 CFR 1.622 or 43 CFR 45.22, with respect to a hearing process consolidated under § 221.23;

(3) NMFS, if it has filed a preliminary prescription; and

(4) Any other Department that has filed a preliminary condition or prescription, with respect to a hearing process consolidated under § 221.23.

Person means an individual; a partnership, corporation, association, or other legal entity; an unincorporated organization; and any federal, state, tribal, county, district, territorial, or local government or agency.

Preliminary condition or prescription means a preliminary condition or prescription filed by a Department with FERC under 18 CFR 4.34(b), 4.34(i), or 5.22(a) for potential inclusion in a hydropower license.

Prescription means a fishway prescribed under FPA sec. 18, 16 U.S.C. 811, to provide for the safe, timely, and effective passage of fish.

Representative means a person who:

(1) Is authorized by a party to represent the party in a hearing process under this subpart; and

(2) Has filed an appearance under § 221.10.

Secretary means the Secretary of Commerce or his or her designee.

Senior Department employee has the same meaning as the term "senior employee" in 5 CFR 2637.211(a).

You refers to a party other than a Department.

§ 221.3 How are time periods computed?

(a) *General.* Time periods are computed as follows:

(1) The day of the act or event from which the period begins to run is not included.

(2) The last day of the period is included.

(i) If that day is a Saturday, Sunday, or federal holiday, the period is extended to the next business day.

(ii) The last day of the period ends at 5 p.m. at the place where the filing or other action is due.

(3) If the period is less than 7 days, any Saturday, Sunday, or federal holiday that falls within the period is not included.

(b) *Extensions of time.* (1) No extension of time can be granted to file a request for a hearing under § 221.21, a notice of intervention and response under § 221.22, an answer under § 221.24, or any document under subpart C of this part.

(2) An extension of time to file any other document under subpart B of this part may be granted only upon a showing of good cause.

(i) To request an extension of time, a party must file a motion under § 221.35 stating how much additional time is needed and the reasons for the request.

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(ii) The party must file the motion before the applicable time period expires, unless the party demonstrates extraordinary circumstances that justify a delay in filing.

(iii) The ALJ may grant the extension only if:

(A) It would not unduly prejudice other parties; and

(B) It would not delay the decision under § 221.60.

§ 221.4 What deadlines apply to pending applications?

(a) *Applicability.* (1) This section applies to any case in which NMFS has filed a preliminary prescription or prescription with FERC before November 17, 2005 and FERC has not issued a license as of that date.

(2) The deadlines in this section will apply in such a case, in lieu of any inconsistent deadline in other sections of this part.

(b) *Hearing process.* (1) Any request for a hearing under § 221.21 must be filed with the Office of Habitat Conservation by December 19, 2005.

(2) Any notice of intervention and response under § 221.22 must be filed by January 3, 2006.

(3) Upon receipt of a hearing request under paragraph (b)(1) of this section, NMFS must do the following by March 17, 2006:

(i) Comply with the requirements of § 221.23;

(ii) Determine jointly with any other Department that has received a hearing request, after consultation with FERC, a time frame for the hearing process and a corresponding deadline for NMFS to file an answer under § 221.24; and

(iii) Issue a notice to each party specifying the time frame for the hearing process, including the deadline for NMFS to file an answer.

(c) *Alternatives process.* (1) Any alternative under § 221.71 must be filed with the Office of Habitat Conservation by December 19, 2005.

(2) Upon receipt of an alternative under paragraph (c)(1) of this section, if no hearing request is filed under paragraph (b)(1) of this section, NMFS must do the following by February 15, 2006:

(i) Determine jointly with any other Department that has received a related

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alternative, after consultation with FERC, a time frame for the filing of a modified prescription under § 221.72(b); and

(ii) Issue a notice to the license party that has submitted the alternative, specifying the time frame for the filing of a modified prescription.

(3) Upon receipt of an alternative under paragraph (c)(1) of this section, if a hearing request is also filed under paragraph (b)(1) of this section, NMFS will follow the provisions of paragraph (b)(3) of this section.

Subpart B—Hearing Process

REPRESENTATIVES

§ 221.10 Who may represent a party, and what requirements apply to a representative?

(a) *Individuals.* A party who is an individual may either represent himself or herself in the hearing process under this subpart or authorize an attorney to represent him or her.

(b) *Organizations.* A party that is an organization or other entity may authorize one of the following to represent it:

(1) An attorney;

(2) A partner, if the entity is a partnership;

(3) An officer or full-time employee, if the entity is a corporation, association, or unincorporated organization;

(4) A receiver, administrator, executor, or similar fiduciary, if the entity is a receivership, trust, or estate; or

(5) An elected or appointed official or an employee, if the entity is a federal, state, tribal, county, district, territorial, or local government or component.

(c) *Appearance.* A representative must file a notice of appearance. The notice must:

(1) Meet the form and content requirements for documents under § 221.11;

(2) Include the name and address of the person on whose behalf the appearance is made;

(3) If the representative is an attorney, include a statement that he or she is a member in good standing of the bar of the highest court of a state, the District of Columbia, or any territory or